D. KENT MICHIE
Insurance Commissioner
Utah Insurance Department

JON M. HUNTSMAN, JR.
Governor

Summary of Legislation

H B 200 PROPERTY AND CASUALTY INSURANCE LAW AMENDMENTS
Representative Jim Dunnigan

Background

- Surplus lines charges include policy premium, fees charged by the insurer, surplus lines tax, and surplus lines stamping fee. Premium is defined as monetary consideration for an insurance policy including assessments, membership fees, required contributions, or monetary considerations. Fees charged by the insurer are considered part of the premium. Surplus lines tax is calculated on premium paid. Within the industry currently, some producers include fees charged by the insurer in premium for the surplus lines tax calculation and some do not. This change is consistent with the definition of premium and brings consistency to the surplus lines tax calculation. The Surplus Lines Association requested this amendment because they need clarification.

- Service contract providers are licensed as "other organizations." Several years ago, per filing fees for "other organizations" were changed to an annual service fee. When that occurred, this Code section was overlooked and not deleted. This change corrects that oversight.

- Purchasers of private passenger auto insurance currently must purchase Personal Injury Protection (PIP) benefits. A purchaser wishing to purchase coverage amounts in excess of basic PIP medical limits may purchase increased PIP medical limits or first party medical coverage. PIP and first party medical benefits are subject to different regulatory activity and potentially different payment rules by claims adjusters. To bring consistency and additional consumer protection to this market, purchasers desiring increased medical limits must purchase increased PIP rather than first party medical benefits. Increased PIP medical limits are available in the current market.

- The training requirements for title insurance producers were placed in a subsection pertaining to all licensed producers, rather than placed in the subsection pertaining to special requirements for title producers. This change makes it easier for title producers to see their special requirements in a single Code section.

- The bond amount of $50,000 required for title agencies has not been increased since the Code was recodified in 1986. The proposed increase in amount to $150,000 takes into account the inflation in real estate transactions over the years.

- The “title reserve fund” contains funds for which the producer has a fiduciary responsibility, however, the Code has not required these funds to be maintained in a Trust Account. Department investigations have discovered co-mingling of these fiduciary funds with agency operating funds. Trust accounts provide more protection for this fiduciary reserve account.

- Within the Utah title industry, some title agencies allow customer’s, i.e. mortgage brokers, realtors, etc., to take loan documents out of the hands of the escrow officer and conduct the closing, or allow notaries who are not licensed as escrow officers to remove the documents from the escrow office to obtain signatures. This abusive practice has resulted in instances of forgeries and even the manufacture of loan documents.

- Other technical changes have been made in the placement of Code language within a subsection or adding clarifying language.

Effects of Legislation

- Clarifies the calculation of premium tax on surplus lines insurance transactions.

- Eliminates the requirement for a filing fee for service contracts as these fees are currently included in an annual service fee.

- Prohibits the use of first party medical coverage to provide increased PIP limits in private passenger automobile policies.

- Places the training period requirement for title producers in the same Code section with other special requirements for title producers.

- Requires any title agency newly licensed, merged, or acquired to be owned or managed by a fulltime title producer holding both title search and title escrow lines of authority.

- Increases title producer bond amounts from $50,000 to $150,000.

- Requires a separate fiduciary trust account for title producer reserve funds.

- Prohibits the release of real estate settlement documents to any person or entity that is not a party to the transaction.

- Requires the issuance of a title policy prior to a title producer conducting a real estate escrow.

- Requires authorization or acknowledgment of any changes to an escrow document by the affected party.

- Requires title producers acting as notaries to comply with Chapter 1 of the Notaries Public Reform Act.

Benefits of Legislation

- Provides consistency in the calculation of surplus lines tax.

- Deletes a superseded Code section dealing with filing fees for service contracts.

- Provides additional consumer protection and consistency in the market with regard to increased PIP benefit limits. Restricts first party medical payment benefits to policies other than private passenger auto.

- Places special training requirements for title producers in a single Code section.

- Provides additional consumer protection by requiring any title agency newly licensed, merged, or acquired to be owned or managed by a fulltime title producer holding both title search and title escrow lines of authority.

- Increases title producer bond requirements from $50,000 to $150,000 thereby adjusting for inflation since 1986 and providing increased consumer protection.

- Requires placement of reserve funds held in a fiduciary capacity in a fiduciary trust account thereby providing increased consumer protection and decreasing the opportunity for misappropriation of funds.

- Provides additional consumer protection by requiring that control of escrow documents is maintained by the escrow office conducting the real estate closing.

- Provides additional consumer protection by requiring the issuance of a title policy before a title agency can close a real estate transaction.

- Requires any changes in real estate closing documents to be authorized or acknowledged by the persons affected by the changes before disbursement of funds, thereby providing additional consumer protection.

- Provides additional consumer protection by requiring title producers acting as notaries to comply with the Notaries Public Reform Act.

Support for Legislation

- This bill comes from the Utah Insurance Department.

- Utah Land Title Association (ULTA) and other members of the title industry support the title insurance changes.

- The following producer groups and lobbyists support the non-title insurance changes in this bill: Utah Independent Insurance Agents Association and Chris Purcell of State Farm and Ross Marchant of Farmers Insurance.